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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/748,976

12/29/2003

Anthony Joonkyoo Yun

PALO-004

8822

24353 7590 02/26/2007
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EXAMINER

KAHELIN, MICHAEL WILLIAM

ART UNIT

PAPER NUMBER

3762

MAIL DATE

DELIVERY MODE

02/26/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/748,976

Applicant(s)

YUN ET AL.

Examiner

Michael Kahelin

Art Unit

3762

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 February 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
Please see attached "Detailed Action".
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

MR 745
2/19/07

GEORGE R. EVANISKO
PRIMARY EXAMINER
2/20/07

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 2/2/2007 have been fully considered but they are not persuasive. Applicant argued that the rejection of claim 1 under 35 USC 103(a) as unpatentable over Rezai (US 2005/0065574, hereinafter "Rezai") in view of Ideker et al. (US 5,522,854, hereinafter "Ideker") is improper because Ideker's invention is drawn to neurological stimulation to treat arrhythmia, not a fertility condition, as claimed by Applicant and disclosed by Rezai. Because of these divergent indications to which the neurological stimulation is applied, Applicant argued that there is no motivation to combine the determination of sympathetic/parasympathetic balance, as taught by Ideker, with the treatment of fertility conditions as taught by Rezai. However, Examiner maintains the position that it would have been obvious to one having ordinary skill at the time the invention was made to combine the teachings of Rezai and Ideker to provide the invention as claimed. First, Rezai discloses in paragraph 0047 that a closed-loop feedback mechanism is used to control the stimulation of the hypothalamic condition (such as a fertility condition) based on such feedback variables as "metabolic activity", "electrocardiogram", and "action potential conduction". These are all indicators of autonomic nervous system activity. Another indicator of autonomic nervous system activity is the sympathetic/parasympathetic ratio, as taught by Ideker (e.g. "abstract"). Ideker further teaches that this ratio can be acquired directly from the nerve (col. 3, line 42) and that this activity can be used to stimulate such autonomic nervous system

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nerves as the vagus nerve (col. 4, line 61). In effect, Examiner does not agree with the characterization that Ideker's teachings apply only to heart conditions, but to the broader concept of autonomic nervous system control. Because both Rezai and Ideker are concerned with the same field of endeavor (i.e. nervous system control), the Examiner considers the references to be analogous art. Furthermore, the Examiner maintains that Ideker's teaching of using the sympathetic/parasympathetic ratio as an effective feedback to control an organ innervated by the ANS is suitable motivation to combine the references. Lastly, using this ratio as an indicator of ANS is known in other areas of the prior art, such as Choe et al. (US 2004/0101934), paragraph 162.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Kahelin whose telephone number is (571) 272-8688. The examiner can normally be reached on M-F, 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MWK

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2/19/07

GEORGE R. EVANISKO
GEORGE R. EVANISKO
PRIMARY EXAMINER

2/10/7